THE HON'BLE Ms. JUSTICE G. ROHINI

WRIT PETITION No.18273 OF 2006

ORDER:

The petitioner herein, was granted a contract for supply of diet to the inpatients and duty doctors in the Government General Hospital, Guntur, vide proceedings of the 3rd respondent dated 25.2.2003, initially for a period of one month. Subsequently, by proceedings dated 12.4.2003, the petitioner was permitted to continue as diet contractor for a period of one year from 1.4.2003 to 31.3.2004, subject to satisfactory performance, which was extended up to 31.3.2006. It is not in dispute that the petitioner was being paid the prescribed diet charges at the rate of Rs.15/- per day, per patient. It is pleaded that the petitioner found it very difficult to supply the prescribed diet at the rate of Rs.15/- per day, per patient and, therefore, he requested the authorities to enhance the diet charges. Since the said request was not considered, he made a representation dated 27.1.2006 requesting the respondents 2 and 3 either to enhance the diet charges or to relieve him from the contract. While so, the Government issued G.O.Ms.No.42 dated 22.2.2006 enhancing the diet charges from Rs.15/- to Rs.20/- per patient, per day. The petitioner alleged that though under G.O.Ms.No.42, dated 22.2.2006, there was no stipulation of increase of diet, the 3rd respondent insisted for supply of certain additional items and called for his willingness. The petitioner expressed his willingness and, consequently, the 3rd respondent by proceedings dated 15.4.2006, permitted the petitioner to continue as the diet contractor with effect from 1.4.2006 until further orders. While so, the 3rd respondent issued the impugned tender notice dated 14.8.2006 inviting applications to run the Diet Canteen for supply of diet to the inpatients and duty doctors for a period of one year. Aggrieved by the same, the petitioner submitted a representation dated 23.8.2006 to the

1st respondent requesting to extend the contract in his favour without processing the impugned tender notice. Since there was no response, this writ petition is filed seeking a declaration that the impugned tender notice dated 14.8.2006 is arbitrary, illegal and contrary to law; and consequently, to direct the respondents to consider the case of the petitioner for extension of contract.

In the counter-affidavit filed on behalf of the respondents, it is stated that as per the instructions of the Government in G.O.Ms.No.32, dated 2.2.2005, the diet contract has to be continued for a minimum period of three years, subject to the satisfactory supply of diet to the inpatients and duty doctors. Accordingly, the contract period of the petitioner was extended up to 31.3.2006, since by that time he had already completed two years of contract. In the meanwhile, the petitioner by letter dated 27.1.2006 informed the respondents that he would withdraw from the contract, which was to expire on 31.3.2006. The said representation made by the petitioner was placed before the Hospital Development Society in its meeting held on 16.2.2006. Having considered the same, Hospital Development Society resolved to call for fresh tenders for supply of diet to the inpatients and duty doctors. While so, it appears that having regard to the enhancement of the diet charges from Rs.15/- to Rs.20/- per day, per patient, the petitioner made a request dated 10.3.2006 to the Secretary, Health and Medical, Government of A.P., requesting to continue his contract from 1.4.2006. Pursuant thereto, the 3rd respondent was directed to consider the request of the petitioner for continuation of the contract in terms of G.O.Ms.No.32, dated 2.2.2005 and G.O.Ms.No.42, dated 22.2.2006. Accordingly, the petitioner was permitted to continue as the diet contractor with effect from 1.4.2006 until further orders, since by that time he had already completed three years. Subsequently, the impugned tender notice was issued as resolved by the Hospital Development Society. The said action is in accordance with law and does not warrant any interference.

I have heard the learned counsel for the petitioner as well as the

learned Government Pleader for Medical and Health appearing for the respondents.

As can be seen from the material available on record, the contract in favour of the petitioner was valid up to 31.3.2006. Even before the expiry of the said period, the petitioner by letter dated 27.1.2006 expressed his unwillingness for continuance of the contract on the ground that the diet charges being paid are not sufficient. However, it so happened that vide G.O.Ms.No.42, dated 22.2.2006, diet charges were enhanced with effect from 1.1.2006. Having regard to the enhancement in the diet charges, the petitioner made a representation dated 10.3.2006 to the 3rd respondent, marking copies to the District Collector and Chairman of the Hospital Developmental Society, Principal Secretary to the Medical and Health Department, Government of Andhra Pradesh and Director of Medical Education, claiming that in view of G.O.Ms.No.32, dated 2.2.2005, he is entitled to continue as the diet contractor beyond from 1.4.2006.

In the meanwhile, the Hospital Development Society, headed by the District Collector, having considered the unwillingness expressed by the petitioner to continue, had taken a decision in its meeting held on 16.2.2006 to call for fresh tenders for supply of diet to the inpatients and duty doctors in the 3rd respondent-Hospital.

It is true that under G.O.Ms.No.42, dated 22.2.2006, while enhancing the diet charges, there was no stipulation to supply additional food items. Hence, the letter addressed by the 3rd respondent dated 29.4.2006 calling upon the petitioner to submit his willingness to provide certain additional items of food to the patients as a condition to examine his representation for continuation of the contract, was not in accordance with G.O.Ms.No.42, dated 22.2.2006. However, whether the diet contractors are bound to supply additional items of food or not, is not the issue before this Court, but the only question requires to be considered is, whether the petitioner is entitled for extension of the contract, and whether the action of the respondents

in issuing the impugned tender notice is arbitrary and illegal.

Under G.O.Ms.No.32, dated 2.2.2005, it was decided by the Government to give a minimum period of three years to the Diet Canteen Contractors in respect of supply of diet to the inpatients and duty doctors in all Government Hospitals with a proviso that the same can be terminated if the performance is found to be unsatisfactory at any time during the contract period with immediate effect.

In the light of the above Government orders, the petitioner contended that he is entitled to continue for a further period of three years with effect from 1.4.2006. I am unable to agree with the said contention, since, admittedly, the petitioner was granted the contract with effect from 25.2.2003, and by 31.3.2006, he had completed the minimum period of three years. It is not as if the petitioner's contract was terminated on the ground of unsatisfactory performance during the subsistence of the contract. Admittedly, the period of contract expired on 31.3.2006, by which date the petitioner had already completed three years as contractor. The facts that the petitioner initially expressed his unwillingness for continuance of his contract, and subsequently withdrew the same are all irrelevant for the purpose of petitioner's claim for extension under G.O.Ms.No.32 dated 2.2.2005, since the discontinuance of the petitioner was admittedly not on that ground.

As expressed above, the action of the respondents 2 and 3 in granting fresh tenders is in no way contrary to G.O.Ms.No.32, dated 2.2.2005. It is also relevant to note that under the proceedings dated 15.04.2006 the petitioner was allowed to continue until further orders, but not for any specific period. Hence, the petitioner has not acquired any vested right to seek a *mandamus* to continue him as diet contractor for a further period of three years.

For the aforesaid reasons, the writ petition is devoid of any merit and the same is accordingly, dismissed. No costs.

However, it is made clear that if any amounts are due to the petitioner relating to the work already executed, it is open to the

petitioner to make an appropriate representation, in which event, the same shall be considered by the respondents within four weeks from the date of receipt of such representation.

_____

(G. ROHINI, J.)

17th October, 2006.
Kgr

THE HON'BLE Ms. JUSTICE G. ROHINI

WRIT PETITION No.18273 OF 2006

17th October, 2006.

Between:

S. Srinivasa Rao. .. Petitioner.

And

The Government of Andhra Pradesh, Department of Health, Medical & Family Welfare (M1), represented by its Principal Secretary, Secretariat buildings, Hyderabad and others. .. Respondents.